DOCUMENT RESUME

ED 201 567 SO 013 319

AUTHOR Michel, George J.
TITLE Judicial Review of Citizenship Education in Nineteenth Century American Schools.
INSTITUTION Governor's State Univ., Park Forest, Ill. Coll. of Human Learning and Development.
PUB DATE 81
NOTE 29p.; Paper presented at Eastern Educational Research Association (Philadelphia, PA, March 1981).

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Citizenship Education; *Court Role; *Educational History; Educational Legislation; Educational Practices; Educational Trends; Elementary Secondary Education; *Government School Relationship; Political Influences; Public Education; Teacher Education; United States History
IDENTIFIERS Judicial Evaluation Approach; Nineteenth Century; *Supreme Court

ABSTRACT

This paper traces the Supreme Court's powers of judicial review in the 19th century and considers its relation to citizenship education. The 19th century was selected as the major focus because it was during this century that the Court attempted to establish its powers of review and generally to reaffirm judicial powers. Also, the controversy over how citizenship should be taught was particularly active during this century. Various influences from earlier periods were apparent, including the family-oriented citizenship teachings of colonial days, Christian citizenship beliefs from pre-Revolutionary days; the belief that good citizens were developed through early education in the sciences, morals, and manners; and the notion that citizenship education was best accomplished through informal talks and exposing students to moral mottos hung on classroom walls. Among the 19th century teacher-training institutions, there appeared to be little distinction between morals and Christian values when it came to defining citizenship education. And, with regard to individual teacher religious/moral beliefs and behavior, it was widely believed that teachers should be models of good citizenship and high moral character because children were more influenced by example than by moral or good citizenship stories. Although the Supreme Court never addressed the question of citizenship education in the 19th century (except as it indirectly involved the teachings of the Mormon religion), it did take the stand on a number of occasions that the federal government had the power to review citizens' behavior. In addition, the Supreme Court generally supported the states' right to control citizenship education for students in public schools throughout the 19th century. (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

GEORGE J. MICHEL

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED201567

SO 013 319

Judicial Review of Citizenship Education In Nineteenth Century American Schools

George J. Michel
Governors State University
Park Forest South, Illinois

Paper presented at Eastern Educational Research Association (Philadelphia, PA, March, 1981).

ABSTRACT

This paper traces the development of the Supreme Court's powers of judicial review and its relation to citizenship education in the nineteenth century. During the nineteenth century, the Court strived to establish its powers of review. Through the work of Chief Justice John Marshall and Chief Justice Roger Taney, the Court emphasized the strong powers of the federal government. In Marbury, the Court established its powers to review matters concerning the federal government. In McCollough, the Court emphasized the federal powers for regulating commerce. However, there were few Supreme Court decisions involving individual rights or education until 1833. In Barron v. Baltimore, it was the Court's opinion that the amendments to the Constitution applied only to federal actions, not to state actions. In 1836, the Court began to narrow its interpretation of the powers of the federal government. By 1856, the Dred Scott decision demonstrated that the state's constitutional power surpassed those of the federal government.

Citizenship education in the schools was a topic of considerable debate before the American Revolution. Questions about it were raised from three distinctive points of view. Those supporting Christian citizenship argued that the Christian religion was the only approach, while others argued that the family represented the only approach. Others like Noah Webster, teacher and scholar, argued that the best approach to teaching children to become good citizens was rigorous discipline. The debate about citizenship education continued in teacher training institutions and schools. However, more reports on how it was taught in the public schools were negative.

In the nineteenth century, the Supreme Court never addressed the question of citizenship education except as it indirectly involved the teachings of the Mormon religion. In Reynolds, the Court supported the territory of Utah in regulating religious teachings. In Davis, the Court supported territorial restrictions on the voting rights of Mormons. The Court's indirect concern for moral and religious teachings was again shown in Romney. Although it was the Court's view that the federal government had the power to review citizen's behavior, it generally supported the state's right to control citizenship education for students in schools. It was the Court's view that the school authorities had full power to implement the curriculum. In 1923 in Meyer, the Supreme Court's perspective on this issue changed slightly, and it recognized that parents and students had some rights to determine what could be taught in school.

In the 19th Century, the major problem of the Supreme Court was to establish its role because the powers of the judiciary were in doubt. The Supreme Court had certainly used the powers of judicial review before the 1800's; however, its powers to resolve conflicts between state laws, individual rights, and the Constitution were non-existent.[1] In December, 1827 after twenty-six years as Chief Justice, John Marshall was still troubled about the conflicts and controversy over the Constitution and its specificity in settling legal disputes. He said about this:

> I began to fear that our constitution is not to be so long lived as its real friends have hoped. What may follow set conjecture at defiance. I shall not live to witness and bewail the consequences of those furious passions which seem to belong to man.[2]

Justice Marshall had been appointed Chief Justice of the Supreme Court on March 4, 1801. Opinions have varied about Marshall's role in shaping the Court; nevertheless, he was a key figure in establishing the powers of judicial review. As Chief Justice, he assumed an enormous work schedule. For example, Warren's analysis of the functioning of the Court showed that from 1801 to 1835, Marshall had delivered 519 of 1106 decisions of the Court. Among 62 decisions which involved Constitutional questions, Marshall had written 36 opinions.[3]

John Marshall and Judicial Review

By assuming such a heavy burden, Chief Justice Marshall insured that he would play a significant role in developing the judicial powers of the Supreme Court. These powers were only vaguely enumerated in Article III, Section I of the Constitution:

1 Morris, Arval A. The Constitution and American Education. St. Paul: West Publishing Company, 1974, pp. 58-64.

2 Adams, John S. An Autobiographical Sketch by John Marshall. Ann Arbor: University of Michigan Press, 1937, p. 43. This quote is from the fair copy of a letter written by Justice Marshall to Justice John Story.

3 Warren, Charles. The Supreme Court in United States History. Boston: Little & Brown, 1947, p. 813.

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.[4]

Justice Marshall appears to have been assertive in defining the Court's powers from his Federalist perspective. In Marbury v. Madison, the Chief Justice recognized that the Constitution had given the Court the power to review the laws of the United States. In Marbury, he specified how the Court was to function:

> So if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so the Court must either decide that conformably to the law, disgarding the Consitution, or conformably to the Constitution, disgarding the law, the Court must determine which of these two conflicting rules governs the case. This is the very essence of judicial duty.[5]

Marbury was one of four petitioners who requested that the Supreme Court compel Secretary of State James Madison to deliver his commission to a federal judgeship. In the last days of a Federalist administration headed by John Adams, the Federalists passed the Judiciary Act of 1801 which created sixty-seven federal judgeships. Outgoing President John Adams made the appointments; however, some of them were never delivered. Marbury petitioned the Supreme Court to permit him to carry out his duties.[6]

The opinion in Marbury involved a number of judicial as well as political dimensions. Most of Justice Marshall's written opinion dealt with the merits of mandamus and the provisions of the Constitution which described the President's powers of appointment and the conditions under which Mr. Marbury was appointed.[7]

4 U.S. Constitution, Article III, Section I.

5 Marbury v. Madison, 1 Curtis 368(1803).

6 Rosenblum, Victor G. and A. Dedrick Castberg. Cases on Constitutional Law - Politicial Roles of the Supreme Court. Homewood, Ill., Dorsey Press, 1973, p. 11.

7 Marbury v. Madison, 1 Cranch 138-168.

Chief Justice Marshall found that Mr. Marbury had been legally appointed to the judgeship. He also found that mandamus was the appropriate remedy for the case in the appellate court, but the Supreme Court was not appropriate judisdiction to issue a writ of mandamus to a federal official.[8] With this decision, Justice Marshall was credited with achieving both a judicial and a political victory over the Republican administration. He had combined the merits of an obiter dictum chastising the Jefferson administration with an advisory opinion which established the principle of judicial review.[9]

Marshall was reputed to be a consummate politician and a good leader of small groups. He had been very influential in Virginia as a jurist and was known as an opponent of Thomas Jefferson. As chief justice, he tried with every opportunity to expand judicial power in the United States. In 1822, Jefferson wrote a series of letters to Justice William Johnson in which he criticized Marshall's control and influence over the Court by the use of the single opinion of the Court.[10, 11]

8
1 Cranch 179.

9
See von Moschzisker, Robert. Judicial Review of Legislation. New York: DeCappo Press, 1923, pp. 72-83. The author argues that Marshall's opinion was not politicially motivated, but was based on research on colonial legislation of the British Privy Council and also was based on a general dissatisfaction of American jurists with British laws.

10
Several authorities view the Chief Justice as a man with substantial political skills. In Roche, John P. Marshall: Major Opinions and Other Writings. Indianapolis: Bobbs-Merrill, 1967, the author points out that Marshall dominated the Court with his personal charm and dedication to his Federalist cause. Roche indicated it was these skills of Marshall's and the clique-like atmosphere of the Court that allowed Marshall to extend the judicial powers of the Supreme Court through many unanimous opinions. Justice Frankfurter was one who felt that Marshall had the capacity of a great judge. However, Frankfurter also recognized that the seven justices of the Marshall court were strongly opinionated, tough-minded intellectuals who were not echoes of Marshall's judicial ideas. See Frankfurter, Felix. The Commerce Clause Under Marshall, Taney and Waite, Chicago: Quadrangle Books, 1964, p. 43. See also John, Herbert Alan, "John Marshall" in Freedman, Leon and Fred L. Israel (Eds.) The Justices of the United States Supreme Court 1789-1969. New York: Chelsea House Publishers, 1969.

11
For a more detailed account of the importance of the Supreme Court to the Federalists and the concerns Thomas Jefferson expressed over control of the Court, see Beveridge, Albert J. The Life of John Marshall, Volume II. Boston: Houghton Mifflin, 1916, pp. 532-564.

In commenting on one case, Jefferson showed his distain of Marshall's ability to create law with a Federalist perspective. He had written a letter to Justice William Johnson in which he was asked whether the Supreme Court was going beyond its constitutional limits. He said about Marshall that:

> This practice of Judge Marshall, of travelling out of his case to prescribe what the law would be in a moot case not before the court, is very irregular and very censurable.[12]

Jefferson and the Republican party were disturbed that powers of judicial review had been established from a Constitutional basis through Marshall's decisions instead of being established by the Congress. Marshall's decision in Marbury stood as a means of reinforcing the Federalist view of jurisprudence and undermining Jefferson's view of the supremacy of the state courts.

The Marshall Court, Contracts, and Federal Power

Even more significant than Marbury in establishing the powers of the Court were two cases that concerned the contract clause of the Constitution. Fletcher v. Peck raised the question about whether the legislation of the state of Georgia had the right to rescind a land contract that had been approved by a previous legislature.[13] Marshall fashioned his opinion in Fletcher into one which supported the contract clause and reinforced federal control over the state's powers; however, there was little evidence in the opinion to indicate that Marshall dealt with anything except the Constitutional question about the contracts clause. Marshall's opinion in Fletcher, had been clouded by the issues the Georgia legislators had been bribed into supporting the purchase of the farmland, and that state possession of the land was questionable.[14]

12 Letter from Jefferson to William Johnson, June 12, 1823, in Kutler, Stanley (Ed.) John Marshall. Englewood Cliffs: Prentice-Hall, 1972, pp. 100-101.

13 Fletcher v. Peck 6 Cranch 87(1810).

14 Corwin, Edward S. John Marshall and the Constitution. New Haven: Yale University, 1921, pp. 151-154.

A similar case was presented to the Supreme Court involving the corporate charter of Dartmouth College.[15] The charter had been granted by the English Crown to the trustees of Dartmouth College in 1769. The suit arose over an attempt by the New Hampshire legislature to revoke the charter of Dartmouth College, appoint new trustees, and expand the purpose of the institution. According to Corwin, however, the legislative action was not motivated by service to the public, but rather by an internal conflict among the trustees which became broader as the Calvinists, the Federalists, and the Republicans became involved.[16] The Dartmouth College case became one of the most significant decisions by the Court because it recognized the use of federal power to influence economic development in the nation. Marshall established a new point in Constitutional law in the case which was to become a cornerstone of jurisprudence in the United States.[17] In his characteristic way, Chief Justice Marshall, without the benefit of referring to other cases, found the private corporate charter to be a contract protected by the Constitution.[18]

A few weeks after the opinion in the Dartmouth College case, the Supreme Court dealt with a complicated issue of a Maryland tax on a branch bank of the Bank of the United States.[19] The bank cashier had been held liable for withholding state taxes on the bank. Marshall's liberal doctrine concerning the powers of Congress to charter a bank as a federal agency was very much in evidence.

15
Dartmouth College v. Woodward 4 Wheat 518(1819).

16
Corwin, Edward S. John Marshall and the Constitution. New Haven: Yale University Press, 1921, pp. 154-172.

17
See Chief Justice Waite's opinion in Stone v. Mississippi 101 U.S. 814(1886).

18
Warren, Charles. The Supreme Court in United States History, Volume I. Boston: Little, Brown & Company, 1922, pp. 475-498.

19
McCollouch v. Maryland 4 Wheat 316(1819).

It was very important in establishing the Constitutional principle of judicial authority and the power of the federal government.[20] Chief Justice Marshall had undeniably in McCollouch established the power of the federal government over the state government. To quote the Chief Justice:

> The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the Constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.[21]

Even more notable than McCollouch, the case in Gibbons helped once again to build the power of the federal government, especially in the area of interstate commerce.[22] Gibbons came to the Supreme Court from New York State. It involved the breaking of steamboat monopoly granted by the New York State legislature to Livingston and Fulton. In analyzing this famous steamboat case, Frankfurter concluded that Marshall could have concluded that the state had the right to legislate in interstate commerce. Instead, Chief Justice Marshall chose to rule on the Constitutionality of whether the state could create a steamboat monopoly.[23] For the Court, Marshall held that federal licensing of navigation was a federal action and any denial of the right to navigate the waters of any state was clearly a hinderance to federal powers to regulate interstate commerce.[24]

In his thirty-five years as Chief Justice, Marshall had already established the foundations of Constitutional law and the power of the federal government. Marbury stood as a testimony to Marshall's skills in using the powers of judicial review.

20 Kentucky Gazzette, April 9, 1819.

21 McCollouch v. Maryland at p. 436.

22 Gibbons v. Ogden 9 Wheat 1(1824).

23 Frankfurter, Felix. The Commerce Clause Under Marshall, Taney, and Waite. Chicago: Quadrangel Books, 1964, pp. 16-17.

24 Corwin, Edward S. John Marshall and the Constitution. New Haven: Yale University Press, 1921, pp. 140-145.

while Fletcher and Dartmouth College emphasized the powers of the federal government over state actions. In McCollouch and Gibbons, the Marshall Court repeatedly found that the federal powers to regulate the national economony were greater than those of the states.

The Nineteenth Century Court and Individual Rights

Although much of the Supreme Court's time in the 19th Century was taken up with questions about charters, commerce, and land claims, in 1833 it demonstrated some readiness to deal with federal infringement on the rights of the individual. In Barron v. Baltimore, the Court determined that the Amendments were limitations only on Congressional actions and did not apply to state legislation.[25] Marshall, in dismissing the case of resident whose wharf was damaged by city paving work, said that:

> The 5th amendment must be understood as restraining the power of the general government not as applicable to the states. In their several constitutions they have imposed such restrictions on their respective governments as their own wisdom suggested; such as they deemed proper for themselves.[26]

Dred Scott v. Sanford and Chief Justice Taney's decision that Congress could not limit the expansion of slavery in the vast western territories changed the emphasis on judicial review.[27] Before 1850, the policy of the Congress was not to intervene with the establishment of slavery in the territories. In 1854, this policy was looked upon favorably because there was no expectation that slavery would be an issue in the territories of Utah and New Mexico. However, pro-slavery forces in Kansas in 1855 elected a pro-slavery legislature. At its first session,

25 Barron v. Baltimore 7 Pet. 243(1833).

26 Barron v. Baltimore at p. 247.

27 Dred Scott v. Sanford 19 How. 393(1856).

the new Kansas legislature enacted a severe slave code. President Franklin Pierce supported this pro-slavery government in Kansas, and the city government of Topeka, Kansas organized a rebellion and established its own rival government to oppose the pro-slavery legislation. It was at this time of conflict and unrest over slavery that Dred Scott came before the Court.[28]

Several factors aside from the political and social issues surrounding slavery influenced the outcomes of Scott's legal battle for freedom. The appointment of Roger Taney in 1836 set off much speculation about changes in judicial review. Three Court decisions in 1837 seemed to support the change from the Marshall Court to the Taney Court. In Charles River Bridge, Chief Justice Taney narrowed to a considerable extent the broad protection of a state charter which Marshall had advanced in Darthmouth College.[29] The Court also ruled that a New York statute regulating foreign commerce was a legitimate power of the state in New York v. Miln.[30] And in Briscoe, the Supreme Court upheld the issuance of state bank notes.[31] In each of these cases, the Taney Court supported the constitutionality of the state laws which appeared to be the opposite of the Marshall Court's emphasis on the powers of the federal government.[32]

The Supreme Court's emphasis on restraint of judicial review and the support of state laws on Constitutional issues was the legal environment of citizenship education in American schools. Citizenship education was embedded in colonial times, attempts to preserve the Constitution, to strengthen state's rights, and to extend

28 Fehrenbacher, Don E. The Dred Scott Case - Its Significance in American Law and Politics. New York: Oxford University Press, 1978, pp. 192-195.

29 Charles River Bridge v. Warren Bridge 11 Pet 102(1837).

30 New York v. Miln.

31 Briscoe v. Bank of Kentucky.

32 Fehrenbacher, Don E. The Dred Scott Case - Its Significance in American Law and Politics. New York: Oxford University Press, 1978, pp. 226-235.

individual rights. Issues of citizenship education concerned the Constitution and the "necessary and proper" clause.[33] Questions about citizenship education before the American Revolution were raised in the elitist schools of Colonial America among the children of wealthy parents. Although colonial schools had lessened the emphasis on social class, it still had a great impact on education in the elite schools both in New England and the South. Many questions were raised about the conflict between democracy and education.[34] One of the first to raise these questions was Noah Webster, a prominent educator and author of the time. Webster recognized the conflict between civil rights and education as it was defined in the Constitution. He said about this:

> The constitutions are republican and the laws of education are monarchial. The former extend civil rights to every honest and industrious man; the latter deprive a large portion of the citizens of a most valuable heritage.[35]

Concern over this became much more intense after the fighting of the Revolution had stopped. At first, the colonial naivete about this issue was viewed as a virtue. The colonies had no federal system to act as an obstacle. They had no corruption to live down, and no contamination from Europe.[36] After the Revolution, however, questions about building the social institutions and shaping citizens became more important. During that time, many opinions and serious conflicts developed about the schools and how they functioned to build good citizens.

Christian Citizenship Before the Revolution

Many prominent thinkers in Colonial America wanted to have a free-thinking citizen for the new nation. On the other hand, they also wanted him to have only

33 Comments, "Constitutional Aspects of Removing Books from School Libraries," Kentucky Law Journal 66 (1):127-149, 1977-1978.

34 Brubacher, John S. A History of the Problems of Education. New York: McGraw-Hill 1947, pp. 42-43.

35 Hansen, A. O. Liberalism and American Education in the Eighteenth Century. New York: Macmillan, 1926, p. 235.

36 Tyack, David. Turning Points in American History. Xerox College Publishing Co., 1967, p. 83-87.

one set of political convictions.[37] One way to achieve this was to turn to the Christian religion. What developed was an approach to citizenship education identified as "Christian Citizenship". It had significant influence on how citizenship was taught in colonial schools.

Dr. Benjamin Rush (1745-1811) was an important contributor to the philosophy of Christian Citizenship.[38] Rush, by training, was a medical doctor, a gradate of Princeton, and a chemistry professor at the College of Philadelphia. His involvement with the Revolution, conflict with the Surgeon-General, and disagreements with General George Washington, made him a controversial advocate of Christian Citizenship.[39] Rush was a very moral and stubborn critic of colonial education. He opposed the teaching methods and corporal punishment in the schools. His opposition to the teaching methods was because he felt the schools impaired rather than encouraged a child's mental and physical growth. Corporal punishment, he said, arroused a child's hostility and made him morally confused:

> To oblige a springhtly boy to sit seven hours in a day, with his little arms pinioned to his sides, and his neck unnaturally bent toward his book; and for no crime! -- what cruelty and folly are manifested by such an absurd mode of instructing and governing young people.[40]

37 Tyack, David. Turning Points in American History. Xerox College Publishing Co., 1967, pp. 83-87.

38 Rush was a signer of the Declaration of Independence from Pennsylvania. He began his involvement with the Revolution by inviting some of the delegates to the Continential Congress to his home in Philadelphia in 1774. Among those his invited were Samuel Adams and his cousin, John Adams. He also befriended Thomas Paine, whom he thought of as a drunkard, but whom he helped with the title of Paine's Common Sense.

39 Benjamin Rush was an enigma to his contemporaries, inconsistent between his behavior and his thinking. He was accused of being a hypocrite. For example, he opposed slavery, yet he owned a slave. In 1773, he wrote a scathing criticism of slavery that was widely published in the colonies and in Europe. A letter to Barbeau Bebough, a French doctor, written on April 29, 1773, showed that Rush expected to curtail slavery by his writing. See L. H. Butterfield, Letters of Benjamin Rush, Princeton, New Jersey: Princeton University Press, 1951, p. 76.

40 Runes, Dagobert. The Selected Writings of B. Rush. New York: Philosophical Library, 1947, pp. 110-112.

Rush's strong support of the Christian religion was the reason that he wanted Christian citizenship to be the basis for all elementary education. To him, Christianity was the one perfect religion that contained all the necessary knowledge for a man to become a useful citizen. He reasoned that the Christian religion and the goals of the nation were the same. Both the Christian religion and the nation proposed safety, happiness for the people, and success for the government. Both also inculcated humility, self-denial, and kindness toward all citizens.[41] Rush summarized his view of Christian citizenship in an essay in which he proposed an Office of Peace for the new colonial government. He wanted the Secretary of Peace to establish and oversee a system of free public schools which would teach reading, writing, and arithmetic. He also proposed that the Christian religion be taught in the schools because it would encourage future citizens to seek peace and to love their enemies.[42]

Family-Oriented Citizenship in the Colonies

Another approach to citizenship education in the colonial schools was based on family values. In Europe, 18th Century families had two opposing value patterns. One was a family which showed little concern for the child, and the other was a family which was overly concerned with the child. In the family that showed little concern for the child, indifference toward the institution of marriage seemed to be the most probable cause. However, the family showing very full concern for the child also seemed to want to mold and supervise the child in such a way as to attend to every detail of his education.[43]

41 Runes, Dagobert. The Selected Writings of B. Rush. New York: Philosophical Library, 1947, pp. 87-130.

42 Ibid., pp. 19-20.

43 Lorence, Borgna W., "Parents and Children in Eighteenth Century Europe", History of Childhood Quarterly, 2(1):1-30, Summer, 1974.

Lorence indicated that another family pattern emerged during 18th Century Europe as a reaction to the indifference and control of these two family structures. The new family structure was the moderate family that cherished the child and supported it with love, gentleness, and affection. It focused on mutual adult-child relations and harmony between the family and the school.[44] This was the type of relationship that was described in the writing of Jean Jacques Rousseau. Rousseau (1712-1778) was a reformer, a revoluntionary, and a key figure in the French Revolution.[45] He was a strong advocate of a democratic form of government, but he doubted whether citizens could be free, and at the same, act in the interest of everyone else in the democracy. He also doubted the concept of Christian Citizenship as a means of controlling citizens. Rousseau, in deed, raised many questions about how to develop good and loyal citizens. At times, he even doubted whether there was any way in which free men could be controlled.[46] He recognized that there must be training in citizenship and that the schools must do the training, but he anguished over this solution. About citizenship education, Rousseau said:

> It is not sufficient merely to say to the citizen, be good; they must be instructed to do so, and even example, which is in this respect the first lesson is not the only means to be employed; love one's country is the most efficacious; for, as I have already observed, every man is virtuous when his particular will is conformable to the general will of the community, and we are naturally led to have the same inclinations as those we love.[47]

44 Lorence, Borgna W., "Parents and Children in Eighteenth Century Europe", History of Childhood Quarterly, 2(1):1-30, Summer, 1974.

45 Rousseau was critical of the French monarchy. He was exiled because of his criticism, but continued it while he was exiled. His major concern about the monarchy was the abuse of power. He preferred no laws at all than to have laws that were broken. See Rousseau, Jean Jacques, Selections from the Work of Jean Jacques Rousseau. Trans. Christian Gauss, New Jersey: Princeton University Press, 1920.

46 In "Dissertation on Political Economy", Rousseau revealed his doubts about democracy and the problems of individual freedom. He said:

> This difficulty which seems to be insurmountable, has been removed by the most sublime of all human institutions, rather by devine inspiration, which teaches mankind to initiate here below the unchangeable decrees of the Diety. By what inconceivable art hath a way been found out to render men free by subjecting them to control?

See the Miscellaneous Works of J. J. Rousseau, Volume II, p. 12.

47 Ibid., p. 12.

Education, for Rousseau, was divided into two types, education for the good of mankind and for citizenship. He preferred the former, but recognized that a national system of education was necessary for the latter. Even though he felt education was wasted on topics and subjects that children did not understand, he felt school should be in an environment of love and affection that only a family could generate. However, Rousseau admitted that it was the educator's job to teach citizenship and protect the child from corruption.[48]

Although Rousseau's ideas on citizenship education had been transported across the Atlantic Ocean, there was little evidence that they were implemented in colonial schools prior to the Revolutionary War. Instead, early colonial schools concentrated on Christian citizenship with an emphasis on Bible-readings and pious books.

Scientific Citizenship in Colonial Schools

There was a third philosophy of citizenship education in colonial schools which was the opposite of Christian citizenship. It rejected the idea that the Christian religion possessed the central tenants of good citizenship. Instead, it proposed that good and loyal citizens were developed through an early education in the sciences, in morals, and manners. One of the most unremitting advocates of scientific citizenship was the educator and author, Noah Webster (1758-1843). Webster separated training in religious morals from training in citizenship. One, he said, was a system teaching the truths of Christianity, while the other was an inculcation of the ideas of loyalty, liberty, and justice.[49] Webster also opposed

48 Wright, Louis B. The Cultural Life of the American Colonies, 1607-1763. New York: Harper Brothers, 1957, pp. 98-103.

49 Webster, Noah. A Collection of Essays and Fugitiv Writing (1790). Delmar, New York: Scholars Facsimilies and Reprints, 1977, pp. 1, 8-9.

the use of the Bible as a primary textbook of the colonial schools. He felt the Bible had been selected as textbook by default because there were few schools and very few publishing companies to print textbooks. As a substitute, the children who went to school brought the Bible because it was the only book available. Noah Webster's strong position against the use of the Bible in school was based on its avowed purpose, to teach religion and morals. He felt the Bible was not designed to be used as a textbook, and if it was overused in the schools, it would also become ineffective as a system of religion. However, he was not opposed to having occasional Bible reading in the schools for religious purposes. Webster said the following about the Bible in the schools:

> ...select passages of which may be read in schools to great advantage. In some countries, the common people are not permitted to read the Bible at all. In ours it is as common as a newspaper, and in schools with nearly the same degree of respect. My wish is not to see the Bible excluded from schools, but to see it used as a system of religion and morals.[50]

Instead of using the Chirstian religion, Webster advocated that citizenship should be taught by rigid discipline in both the family and the school. As a severe critic of colonial schools, he sought simple goals for them, to learn a language, and to be civil in manners and in custom. His ideas on citizenship education came from his studies of the Greek city-states and how they developed loyal and patriotic citizens. Webster found that citizens in the city-states were taught to accept great hardship and danger.[51] Convinced that this was the proper way to develop good citizens, he emphasized rigid discipline. His views on this were clearly expressed in his "Essay on Education" in which he stated that:

50 Webster, Noah. A Collection of Essays and Fugitiv Writing (1790). Delmar, New York: Scholars Facsimilies and Reprints, 1977, pp. 8-9.

51 Hansen, A. O. Liberalism and American Education in the Eighteenth Century. New York: Macmillan, 1926.

> The rod is often necessary in school; especially after children have been accustomed to disobedience and licentious behavior at home. All government originates in families and if neglected there, it will hardly exist in society.[52]

Webster was a graduate of Yale and a member of the class of 1778. He was a curious-looking, quaint college student with a reputation for self-reliance and a strong self-interest.[53] In 1782, he took a teaching position as a schoolmaster in goshen, New York, where he wrote the American Spelling Book.[54] His general textbook was to become one of the most popular textbooks of all time literally outselling the Bible by hundreds of millions of copies.

In one edition of the American Spelling Book published in 1795, there was a total of 164 pages with 51 pages devoted to a digested system of language and grammar including nine stories and fourteen lessons on morality.[56] The most controversial part of the book was the rules for grammar and pronunciation.[57] Webster's ideas and books sparked one of the most bitter and competitive disputes over teaching language in the 19th century schools. Noah Webster believed that a uniform national language would help in the development of good citizenship. The conflict over this issue took place in the prefaces of the other spellers.

52
Webster, Noah. A Collection of Essays and Fugitiv Writings (1790). Delmar, New York: Scholars Facsimilies and Reprints, 1977, p. 16.

53
Ezra Stiles, President of Yale, when Webster went there, described him as a good debater and player of the fife. See French, Robert. The Memorial Quadrange - A Book About Yale. New Haven: Yale University Press, 1929, pp. 318-323.

54
Webster first wanted to call his book, The American Instructor, but Ezra Stiles prevailed upon him to call it, A Grammatical Institute of the English Language. Since there were no copyright laws, the book had hundreds of editions and some were published with the Institute title. See Commager, Henry Steele, comments on Noah Webster, The American Spelling Book. New York: Teachers College, Columbia, 1962, pp. 1-2, 12.

55
Jefferson Davis estimated that tens of millions of copies of the American Spelling Book had been sold. See Commager, Henry Steele analysis; See also Warfel, Harry, Letters of Noah Webster. New York: Library Publishers, 1953, pp. 337-339.

56
Webster, Noah. The American Spelling Book, 1795.

57
Warfel, Harry. Noah Webster - Schoolmaster to America. New York: Macmillan, 1936, pp. 378-400.

Each criticized the other for errors in spelling and grammar.[58]

Teaching Citizenship in 19th Century Schools

Nineteenth Century American schools were deeply marked by the controversy over how citizenship was taught. There were few public schools and if there was a public school, the teachers in it was very poor and the teaching of morals and citizenship was left to the discretion of these poor teachers.[59] Citizenship education was probably accomplished through informal talks and the moral mottos hung on the walls. One of the earliest texts used in these schools was the Horn-Book published in England in 1609 and brought to the colonies by teachers and ministers who wanted to start schools. The selection of reading often contained the alphabet, ten digits, some elements of spelling, the Lord's prayer.[60] Besides the Bible, the Horn-Book, and a Psalter, there were few other textbooks in the colonial schools. It was a common practice to instruct the children in the catechism for nearly fifty years in the public schools throughout New England.

Efforts to teach citizenship education were increased by westward expansion. Before the adoption of the Constitution, the colonial government began setting aside one-sixteenth section of land in every township for the establishment and support of schools. In the Northwest Ordinance of 1787, religion and morality were emphasized as a basis for governing and educating the whites and Indians in the territory. In Article I of the "Act to Provide for the Government", it stated:

58 Two rivals of Noah Webester's American Spelling Book were Lyman Cobbs' Cobbs' Speller, published in 1821, and Hazen's Speller and Definer or Class Book No. 2, published in 1829. See Neitz, John A. Old Textbooks. Pittsburgh: University of Pittsburgh, 1961.

59 A report on the teaching of citizenship and morals in the colonial schools appeared in 1875. See Barnard, Henry. The American Journal of Education, 1875, Volume 32, p. 791.

60 The Horn-Book was the first book made to be handled by children. It was a wooden paddle usually 2-3/4" by 5" including the handle. A reading selection was pasted on the paddle and covered by a sheet of transparent animal horn attached to the paddle with brass tacks. Sometimes, there was a hole in the handle with a leather thong attached for handing from the wall. See Folmsbee, Beulah. A Little History of the Horn-Book. Boston: The Horn-Book Inc., 1942, pp. 2-51.

> No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in said territory.[61]

Further statements in Article II expressed the national interest in religion as a basic of education and provided a means of attracting new settlers interested in education to the territory:[62]

> Article III: Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed...[63]

Observations about how this purpose was achieved in schools in the 19th century were varied and unreliable. They showed that colonial schools taught basics and vocational arts. Anne Royall had traveled from Alabama to New York in 1823. She stopped at a privately run orphanage owned by Mrs. McKenny which housed fifteen girls from 5 to 12 years. In detailing education in the orphanage, she described its objectives as:

> To cherish and protect their infant state; to sweeten their cup of sorrow (sic.) to sow the seeds of virture and "to teach the young idea how to shoot," to draw out these hidden beauties of the mind which gain our admiration, and fit them for the various duties of life....[64]

When Ms. Royall reached the schools of New York City, she wrote about the Lancaster organization of instruction with a student monitor at each row of desks.

61 Peters, Richard. The Public Statutes at Large of the United States of America. Boston: Little, Brown, and Co., 1854, p. 52.

62 Brubacher, John S. A History of the Problems of Education. New York: McGraw-Hill, 1947, pp. 63-64.

63 Peters, Richard. The Public Statutes at Large of the United States of America. Boston: Little, Brown, and Co., 1854, p. 52.

64 Royall, Anne. Sketches of History, Life, and Manners in the United States. New Haven: 1826, p. 144.

She found that the New York City schools reflected no signs of social class. They were open to all children and had, according to Ms. Royall, highly qualified teachers that the children were taught to read by first learning the alphabet, then learning two letter words. Ms. Royall seemed most impressed by the discipline which was maintained by just a word or a stare:

> The best disciplined army is not more regular or obedient; at a signal they are hushed as death, or at another they proceed in their lessons.[65]

However, 19th century schools were also described by Isaac Fidler as having serious problems because of lack of discipline:

> Sixty to 80 pupils taught by one or at the most two school masters. Corporal punishment was not used and there was no correction or coercion or restraint. Education in New York State was at a low ebb. Neither parents nor school master had control over the boys....[66]

The cause and effect relations between citizenship education, discipline, and respect of adults were drawn together in the evaluation of other people of the period. For example, Ms. Fanny Wright, a radical reformer of the social institutions of the 19th century, travelled throughout the country in 1818.[67] Her letters describing her experiences showed a strong concern for citizenship education and free public schools. In a letter she wrote in 1820, she reflected on these impressions of effective discipline. She was very impressed with the behavior of

65 Royall, Anne. Sketches of History, Life and Manners in the United States. New Haven: 1826, p. 256.

66 Fidler, Isaac. Observations on Professions, Literature, Manners, and Emigration in the United States and Canada. New York: J. & J. Harper, 1823, pp. 39-40.

67 Miss Wright was a reformer of the 19th Century. Her ideas became known as "Fanny Wrightism", a synonym of radicalism of the time.

children in the schools of Connecticut. She remarked about the children that:

> I was forcibly struck in Connecticut with the appearance of the children, neatly dressed, with their satchels on their arms and their faces blooming with health and cheerfulness, dropping their courtesy to a passenger as they trooped to school...Like young Spartans, the youth are taught to salute respectfully their superiors in years....[68]

For the most part the quality of the colonial schools varied from typical one room school houses to the better quality schools of the larger cities. Census figures in the 1840's showed there was 3,248 private academies and over 47,000 public elementary schools.[69] One of the best insights into how citizenship was taught in these schools was provided by Thomas Palmer.[70] He criticized the teaching of morality and citizenship arguing that children were much more influenced by example than by moral stories in the textbook depicting bad boys being beaten, bitten by dogs, or suffering broken legs. He asked for reform in citizenship education arguing that:

> The subject of moral education, is sadly neglected in the schools, and the little, that is attempted, generally founded on false principles.[71]

Among the 19th century teacher training institutions, there appeared to be little distinction made between morals and Christian values when it came to defining citizenship education. In Massachusetts where Horace Mann was Secretary to the Board of Education in 1839, moral character and christianity were the same. Mann proposed a system of teacher training institutions where each prospective student

68 See Footnote #67.

69 Bode, Carl. American Life in the 1840's. New York: New York University Press, 1967, pp. 95-96.

70 Palmer's book was the winner of an essay contest on how to develop good schools. It appeared in the Teachers Manual in 1840.

71 Ibid., p. 56.

would provide evidence of intelligence and good moral character. In the curriculum for teacher training, he proposed to teach the principles of piety, Christian morality, and daily Bible-reading.[72]

A similar interpretation of citizenship and Christian morals was instituted in the teacher education institutions of Connecticut. A brochure written to recruit students to the first teacher education institution in the state emphasized that students should have moral character, health, manners, love of children, information, love of teaching, a spirit of cooperation, and teaching experience. Henry Barnard, the State Superintendent and principal of the teacher training institution, said:

> We beg you, therefore, as far as you can, to send us candidates for admission to the Normal School who possess
>
> Purity and strength of moral character - an exemplary life, and the habit of self-government and of subjecting their own actions to the test of moral religious principle....
>
> Good manners - and by this, we mean those manners which are dedicated by the spirit of our Saviour's Golden Rule, of doing unto other as we would have others do unto us, in manner as well as in matter.[73]

In another report to the general assembly of the state of Connecticut in 1850, Barnard again stressed the education of teachers with strong moral and ethical qualities.[74]

State Authority to Regulate Textbooks

For the most part, the legal struggle over who decides what was to be taught in the schools of the 19th century did not involve citizenship education. The legal question answered by the state court was: who decides what is to be taught and what textbooks are to be used in the schools.

72 Mann, Horace. "Tenth Annual Report of the Secretary of the Board", in Henry Barnard (Ed.) Normal Schools and Other Institutions. Hartford: Case, Tiffany, 1851.

73 Ibid., p. 61.

74 Barnard, Henry. "Fifth Annual Report of the Superintendent of the Common Schools of Connecticut to the General Assembly", May Session, 1850.

In determining what textbooks could be used in the schools, the state court found that this was among the discretionary powers granted to the school board and its agents.[75] The school board's selection of textbooks was not subject to judicial review even when those textbooks might be dangerous and immoral.[76] In the case of Jones, the board of education in the city of Detroit had adopted Reed's Word Lessons as the textbooks to be used in the schools. After some 6,000 copies of Reed's textbooks had been sold to parents, the school board changed the text and adopted another one. A taxpayer brought suit against the school board charging that it had violated the Michigan Textbook Act of 1887, which stated that once a textbook had been adopted, it could not be changed except by a vote of the school district residents. In supporting the taxpayer's claim, the presiding judge recognized the state's power in curriculum matters. The court's opinion was that state laws on education could not be changed by school board laws for reconsidering textbook adoptions.[77]

Before 1850, the children who went to public schools used the Bible, a Psalter, and the Horn-Book as textbooks. At that time, most of the public schools were ungraded and instruction was individualized. As the graded structure such as the Lancasted system became popular in the large cities, textbooks became a necessity for the schools and parents were required to provide the textbooks that the school district adopted. However, when the family moved from one community to another, purchasing different textbooks in each school became a financial burden, and textbooks became a major issue.[78] By the end of the 19th century, over 93 of 163 American cities over 25,000 population were supplying free textbooks to school children, but it was a long struggle to reach that point.[79]

75 Curryer v. Merrell, 25 Minn. 1, 22 Am. Rep. 450(1878), State ex. rel. Wolfe v. Bronson, 115 No. 271, 21 S.W. 1125(1893).

76 Donahue v. Richards, 38 Me. 379, 61 Am. Dec. 256(1854).

77 Jones b. Board of Education of the City of Detroit, 88 Mich. 371, 50 N.W. 309(1891).

78 Tidwell, Clyde. State Control of Textbooks. New York: Teachers College, Columbia University, 1928.

79 Ibid., pp. 13-56.

State Authority to Regular Manners and Morals of Teachers

Basic ideas about well-trained and moral teachers remained active in debate and litigation through the 19th century.[80] The public schools grew slowly during the early part of the century. The value of public education was seriously questioned and those about Christian morality and citizenship were continually reviewed by the court.

As 19th Century ideas about public education began to expand, so did the ideas about citizenship and the moral character of the teacher. In 1855, a school superintendent of a local school district in New York State refused to grant a woman a teaching certificate because of questions about her moral character. The state court supported the power of the state recognizing that it had given the woman a teaching certificate issued by its state superintendent.[81]

State powers to legislate and enforce laws revoking a teaching certificate for immorality and other causes had been acknowledged by other state courts. If a teacher was given a fair and adequate notice and the actions of the hearing officer representing the state were made in good faith, the Court of Arkansas upheld those actions and declared that the hearing officer was not liable.[82] Even if a teacher's misconduct was condoned for a time by the local school board, the state court found that this did not mean that the state, through its agents, waived the right to dismiss the teacher for immoral behavior.[83] The court of Kansas went even further. It recognized that contractual rights of a teacher did not supersede the right of the state to dismiss a teacher for incompetency, cruelty, negligence,

80 Brubacher concluded that the omission of the tasks of education from the U.S. Constitution did not eliminate education as a concern of the Constitutional Convention. He indicated that the issue was settled in the implied powers clause of the Tenth Amendment because it was understood that education became a state power. See Brubacher, John S. A History of the Problems of Education. New York: McGraw-Hill, 1947, pp. 63-64.

81 People v. Masters, 21 Barb 252 (New York, 1885).

82 Lee v. Huff, 61 Ark 494, 33 S.W. 846(1896).

83 District v. Maury, 53 Ark 471, 14 S.W. 669(1890).

or immorality.[84] Although the court recognized that local boards of education did not have absolute authority over the moral behavior of teachers, they had considerable power to regulate the morals of the teacher. In the case of Armstrong, the appellate of Missouri found that the state legislature could also place limits over these local school boards in dismissing a teacher.[85]

The Supreme Court and Moral Teaching

A major question raised in the Supreme Court of the 19th Century was whether each state or territory had the right to regulate adult practices and religious teachings that it found repugnant.[86] In Reynolds v. United States, the court of the territory of Utah convicted George Reynolds charging him with bigamy in violation of territorial law. In his appeal, Mr. Reynolds argued that he was not guilty of the charge because polygamy was part of his religious belief, and he had no intention of committing a crime, perpetuating evil thoughts, or conducting evil practices. Mr. Reynolds had been a member of the Mormon Church for many years. He accepted the doctrine of polygamy and the revelation of Joseph Smith, the founder of the church, that failing to practice polygamy would end in damnation. In the opinion, the Supreme Court recognized the Constitution prohibited the territory from passing laws which prohibited the free exercise of religion, but the Court also distinguished between religious belief and behavior. In delivering the opinion of the Court, Chief Justice Waite said:

> Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices...So here, as the law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed...Upon careful consideration of the whole case, we are satisfied that no error was committed in the court below.[87]

84 Brown v. School District No. 41, 1 Kan. App. 530, 40 Pac. 826(1895).

85 Armstrong v. School District, 19 Mo. App. 462(1885).

86 Comments, "Constitutional Law - Free Exercise of Religion and Compulsory Education," Minnesota Law Review, Summer, 1976, 56:111-116.

87 Reynolds v. United States, 98 U.S. 145(1878).

In upholding the conviction of Mr. Reynolds, the Supreme Court recognized that free exercise was supported by the Constitution, but that religious practices were subject to territorial law. Only indirectly did the Court address any question about religious teaching and moral education. The same was true about religious teachings in a subsequent case.

In Davis v. Beason, a group of Mormons including Mr. Davis, had signed an oath affirming that they were not teaching, advising, or counseling bigamy or polygamy. They were separately convicted of violating the territorial law which read:

> no person who is a bigamist or a polygamist, or who teaches, advises, counsels or encourages any persons to become bigamists or polygamists or to committ any other crime defined by law, or celestial marriage. . . .is permitted to vote at any election, or to hold office.[88]

The defendants pleaded that any law that interfered with the establishment of religion was a violation of the Fourteenth Amendment prohibiting the free exercise of religion and prohibiting the citizen from carrying out his duties without the due process of law. Mr. Justice Field, relying heavily on Reynolds, supported the convictions of the lower court. He said:

> Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They tend to destroy the purity of the marriage relation, to disturb the peace of the family, to degrade woman and debase man. . . If they are crimes, then to teach, to advise and counsel their practice is to aid in their commission.[89]

The teaching of religious and moral tenants in these cases was treated indirectly. More important, the Court found that the Constitution upheld the free exercise of religion and the territorial power to determine specific laws for behavior. At no time did the education of Mormon children and teaching of citizenship become the Court's concern.

88
Davis v. Beason, 133 U.S. 333(1890).
89
Davis v. Beason at p. 341.

There was, however, an indirect concern about citizenship education and the teachings of the Mormon Church raised in Romney v. United States.[90] The Congress had repealed the charter of the Church of the Latter Day Saints in the Utah territory in 1872. Congress had further seized all the property of the church, and the plaintiff challenged the constitutionality of the action. In supporting the decision by Congress, the Court affirmed congressional powers to acquire territories, to make treaties, and to repeal territorial laws. As a secondary matter, the Court recognized that Congress, like the English Crown, also possessed the power of parens patriae. This doctrine provided for the protection of defenseless people and children.[91] It was only a minor justification for the direct sale of the property of the Mormon Church to establish public schools in Utah.[92]

Further, the Court affirmed the state's pwer to pass laws against certain practice-that were offensive to people. It was only indirectly in Romney that the Supreme Court recogizned that the doctrine of parens patriae was an appropriate federal power, but it was only to be used in supervising the charitable gift of church property for education.

The 19th Century Court and Citizenship Education

In the 19th Century, the Supreme Court found that the federal government had the right to review matters pertaining to citizen behavior, but it appears that only the state could exercise control over the child's religious affiliations.[93] Such state control could be exercised apparently without regard to parental wishes or contracts.[94]

90
Romney v. United States, 11 S. Ct. 884, 140 U.S. 665(1890).
91
Black, Henry Campbell. Black's Law Dictionary, 4th Edition. St. Paul: West Publishing Company, 1968, p. 1271.
92
Romney v. United States at p. 66.
93
Whalen v. Olstead, 61 Conn. 263, 23 Atl. 964(1897).
94
Bonnett v. Bonnett, 61 Iowa 199, 16 N.W. 91(1883).

By recognizing the superiority of state powers in these areas, the Supreme Court of the 19th Century demonstrated more concern for the federal powers over contracts and charters than it did for the issues related to free exercise or education. When colonial issues of religious practices or individual rights conflicted with state and territorial laws, the Court undeniably supported the state laws.

The state courts, in turn, reinforced one concept of citizenship education, strong state control of education. State courts recognized the state legislature and the school board had broad discretionary powers over the management and the curriculum of the school including citizenship education. The state courts also made it clear that they would not direct their powers of judicial review at the state legislature's control of the schools, the books to be read, or the instruction that took place.[95] In changes of grade structure and changes in school personnel, the state courts remained adamant in these matters. However, the state courts could intervene into school business where there was abuse of the legislature's power.[96]

The Supreme Court's view of the state control of education was that school authorities had full power to require the students and parents to accept the curriculum. It left the judgments about citizenship education to the discretion of the school board. It would not be until twenty-five years later that the Court in Meyer and in Pierce would recognize that parents also had some right to determine what was to be taught in the public schools.[97]

95
Board of Education of the City of Cincinnati v. Minor, 23 Ohio 211, 13 Am. Rep. 233(1872).

96
Commonwealth v. Jencks, 154 Pa. 368, 26 Atl. 271(1893).

97
Meyer v. Nebraska, 262 U.S. 390(1923).
Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571(1925).